

Before the  
Administrative Hearing Commission  
State of Missouri



HARVARD PRIVATE CAPITAL  
HOLDINGS, INC.,

Petitioners,

vs.

DIRECTOR OF REVENUE,

Respondent.

No. 14-1945 RI

**DECISION**

We grant the motion for decision on the pleadings filed by the Director of Revenue (“the Director”). Harvard Private Capital Holdings, Inc. (“HPCH”) is liable for \$5,675.00 in corporate income tax for 2012 plus statutory interest.

**Procedure**

On December 10, 2014, HPCH filed its complaint, appealing the Director’s final decision that it is liable for \$5,675.00 in corporate income tax plus statutory interest. On January 8, 2015, the Director filed an answer and a motion for decision on the pleadings. We gave HPCH until January 26, 2015 to respond, but it did not respond.

Regulation 1 CSR 15-3.446(4)<sup>1</sup> provides:

A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may

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<sup>1</sup> All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

grant a motion for decision on the pleadings if a party's pleading, taken as true, entitles another party to a favorable decision.

### **Findings of Fact**

1. HPCH is exempt from federal income tax under 26 USC § 501(c)(3). For the 2012 tax year, HPCH filed a federal Form 990-T and reported unrelated business taxable income (“UBTI”), in Missouri, in the amount of \$165,503. This UBTI was derived from the net income of three separate partnerships that operated in Missouri for 2012.

2. Also for the 2012 tax year, HPCH filed a Form MO-1120 with the Director and reported the same amount of Missouri UBTI, \$165,503. However, in the Form MO-1120, HPCH deducted operating losses for its three partnerships, from previous years, in the amount of \$90,807. Thus, HPCH reported its Missouri taxable income for 2012 as \$74,696 and calculated Missouri income tax due in the amount of \$4,669. HPCH paid the Director \$4,669 at the time of filing its Form MO-1120.

3. On July 22, 2014, the Director issued a notice of deficiency for \$5,675 in tax, plus additions in the amount of \$517.20, and statutory interest. The deficiency was derived from adding back the loss deductions of \$90,807 HPCH claimed from its 2012 Missouri income. The Director taxed the full amount of Missouri UBTI of \$165,503 and found HPCH liable for \$10,344 in Missouri income tax.

4. HPCH timely protested the alleged deficiency.

5. On November 10, 2014, the Director issued a final decision finding that HPCH is liable for taxes on the full amount of Missouri UBTI and therefore owes the remaining balance of its Missouri income tax of \$5,675 plus statutory interest. In this final decision, the Director removed the additions to tax.

## Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions. Section 621.050.1.<sup>2</sup> Our duty in a tax case is not to review the Director's decision but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful liability. HPCH bears the burden to show its tax liability for 2012 is something other than what the Director has determined it to be.<sup>3</sup>

To determine its 2012 Missouri income tax, HPCH allocated the net income from its interests in partnerships that operated as Missouri taxable income. The 2012 net income from the three partnerships operating in Missouri was \$165,503. HPCH then deducted \$90,807 from the Missouri taxable income as a modified Missouri net operating loss based on the amount of Missouri partnership losses reported to Missouri in previous tax years. Based on the deduction of \$90,807 from 2012 Missouri taxable income, HPCH asserts it only owes 2012 Missouri income tax on \$74,696 rather than the 2012 partnership net income of \$165,503.

Deductions from tax depend on legislative grace and are allowable only to the extent they are authorized by statute.<sup>4</sup> HPCH is seeking to make a deduction for losses from prior tax years' Missouri taxable income. These losses are not based on federal income and deductions.

For purposes of determining the Missouri tax benefits of an NOL, the taxpayer's sole recourse is to 26 USC § 172.<sup>5</sup> The only income tax deduction allowed under Missouri law for net operating losses is for federal net operating losses which must be deducted from the taxpayer's gross income as reported on its federal income tax return. Missouri law does not authorize a taxpayer to deduct losses from prior tax years in addition to what is deducted from federal net operating losses.

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<sup>2</sup>Statutory references are to the 2000 Revised Statutes of Missouri, unless otherwise noted.

<sup>3</sup>Sections 621.050.2 and 143.661.

<sup>4</sup>*Brown Group, Inc. v. Administrative Hearing Commission*, 649 S.W.2d 874, 877 (Mo. banc 1983).

<sup>5</sup>*Eilian v. Director of Revenue*, 402 S.W.3d 566, 572 Mo. banc 2013).

HPCH's Missouri taxable income for 2012 was the net income from its interests in partnerships operating in Missouri during 2012. In 2012, HPCH's Missouri partnership net income was \$165,503. There is no statutory deduction that can be applied to reduce the amount of HPCH's Missouri taxable income for 2012. Based on Missouri taxable income of \$165,503, HPCH's 2012 Missouri income tax is \$10,344.

#### Interest

Section 143.731 imposes interest on an underpayment of income tax from the date the payment was due at the rate determined by §32.065. Therefore, HPCH is liable for such interest on the income tax owed, but not yet paid, in the amount of \$5,675.

#### **Summary**

We grant the Director's motion for decision on the pleadings and affirm that HPCH is liable for the unpaid balance of \$5,675 of its 2012 income tax, plus statutory interest.

SO ORDERED on February 24, 2015.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner